

dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1030.11 [Reserved]

§ 1030.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority and whose milk is received at a pool plant or diverted pursuant to § 1030.13.

(b) "Producer" shall not include:

(1) A dairy farmer who is a government and has nonproducer status for the month pursuant to § 1030.19;

(2) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(3) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1030.44(a)(8)(ii) and the corresponding step of § 1030.44(b);

(4) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer with respect to milk produced by him that is received at a handler's pool plant during the months of January through July if any milk from the same farm operated by such dairy farmer was a receipt of producer milk in any "payback" month during the preceding year under another order that provided for a seasonal incentive payment plan whereby funds previously withheld in the computation of the uniform price to producers were paid back to producers through the uniform price computation in subsequent months of the year.

[39 FR 15405, May 3, 1974, as amended at 42 FR 38582, July 29, 1977]

§ 1030.13 Producer milk.

Producer milk means the skim milk and butterfat in milk of a producer that is:

(a) Received at a pool plant directly from producers by being physically unloaded into processing facilities, a storage tank, or another tank truck, as further provided below:

(1) Any shrinkage of milk received from producers' farms which was not unloaded in a pool plant shall also be producer milk under this paragraph; and

(2) In the event that part of a load of milk is first received at another plant(s) and the remaining part is then unloaded in the pool plant, the quantity of milk so received at each such plant shall be prorated over the total quantity of milk picked up at each producer's farm.

(b) Received at a pool plant from a handler described in § 1030.9(c).

(c) Received by a handler described in § 1030.9(c) to the extent of the shrinkage of skim milk and butterfat received from producers' farms which was not received in a pool plant pursuant to paragraph (b) of this section. In applying §§ 1030.52 and 1030.75, such skim milk and butterfat shall be deemed to have been received at the location of the pool plant to which delivery is normally made.

(d) Diverted by the operator of a pool plant, or by a handler described in § 1030.9(b), to another pool plant or to a nonpool plant (that is not a producer-handler plant), subject to the following conditions:

(1) During each of the months of August through January, milk from a dairy farmer shall not be eligible for diversion unless at least one day's production is received and physically unloaded at the pool plant where such milk is reported as producer milk;

(2) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion unless at least one day's production is received and physically unloaded during the month at the pool plant where such milk is reported as producer milk;

(3) The quantity of each producer's milk to be considered as diverted milk when a portion of a tank load of milk,

picked up at the farms of two or more producers, is unloaded at another plant, shall be determined by prorating the total quantity unloaded at such other plant over the total quantity of milk picked up at each producer's farm;

(4) To the extent that milk diverted by a cooperative association as a handler described in §1030.9(b) during any month would result in a plant failing to qualify as a pool plant under §1030.7, such diverted milk shall not be producer milk;

(5) Diverted milk shall be priced at the location of the plant to which diverted, except that, in the case of a distributing plant, if during the month not more than 4 days' production of a producer is diverted from such plant or if the diverted milk is part of a tank truck load of milk that exceeds the milk storage capacity of such distributing plant, such milk shall be priced at the location of the plant from which diverted.

[42 FR 38582, July 29, 1977, as amended at 49 FR 32340, Aug. 14, 1984; 49 FR 33205, Aug. 22, 1984; 53 FR 26761, July 15, 1988]

§ 1030.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in §1030.40(b)(1) from any source other than producers, handlers described in §1030.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in §1030.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1030.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in §1030.40(b)(1)) for which the handler fails to establish a disposition.

§ 1030.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section *fluid milk product*

means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[58 FR 27808, May 11, 1993]

§ 1030.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

[58 FR 27808, May 11, 1993]

§ 1030.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1030.18 Cooperative association.

Cooperative association means any cooperative marketing association of